

Filling Vacancies in the Office of the United States Senator

Unlike vacancies in the U.S. House of Representatives, which must be filled according to federal law by elections, the U.S. Constitution gives states the ability to choose how to fill vacancies in the U.S. Senate. All states do so through an election, but they vary in two ways: whether the vacancy is filled at a regularly-scheduled election, or at a special election; and whether the governor can make an appointment to fill the vacancy during the period before the election occurs.

Presently, 36 states fill a U.S. Senate vacancy at their next regularly-scheduled general election. The remaining 14 require that a special election be called. And only four states prohibit the governor from making an interim appointment, requiring instead that the seat remain vacant until the next election (whether regular or special) is held. In another three, the governor may make an appointment to fill the vacancy temporarily, but only under very strict conditions.

Vacancies Filled by Gubernatorial Appointment

In the following 36 states, the governor makes an appointment to fill a U.S. Senate vacancy, and the appointee serves until the next regularly-scheduled, statewide general election. The person elected at that next regularly-held general election serves for the remainder of the unexpired term, if any. If the term was set to expire at that general election, the person elected serves a full six-year term.

Arkansas	Kansas	New Mexico
Arizona (1)	Kentucky	New York (2)
California	Maine	North Carolina (1)
Colorado	Maryland (1)	Ohio
Delaware	Michigan	Pennsylvania
Florida	Minnesota (2)	South Carolina
Georgia	Missouri	South Dakota
Hawaii (1,2,3)	Montana	Tennessee
Idaho	Nebraska	Utah (1)
Illinois	Nevada	Virginia (2)
Indiana	New Hampshire	West Virginia
Iowa	New Jersey (2)	Wyoming (1)

(1) The governor's appointee must be of the same political party as that of the vacating Senator.

(2) If the vacancy occurs before a specified date preceding the regular primary (HI-21 days; MN-11 weeks; NJ-30 days; NY-59 days; VA-120 days), the election is held the following November; if the vacancy occurs within the specified period preceding the regular primary, the vacancy election is held at the second November election after the vacancy occurs.

(3) The governor makes an appointment by selecting from a list of three prospective appointees submitted by the party.

Vacancies Filled by Special Election



In contrast to the states above (which wait until the next regularly scheduled statewide general election to fill a vacancy in the office of U.S. Senator), the 14 states listed below require that a special election be held to fill a vacancy in the office of U.S. Senator.

State	Interim Gub. Appt.?	Special Election Must be Held
Alabama Ala. Code 36-9-7 et seq.	Yes	On such a day as the governor may direct, unless vacancy occurs between 2 and 4 months before the next regularly-scheduled general election, in which case it is held at that election. If vacancy occurs within 60 days of the next regularly-scheduled general election, a special election must be held on the first Tuesday after 60 days have elapsed since the vacancy occurred.
Alaska Alaska Stat. 15.40.140, 15.140.142, 15.10.145	Yes	A special election must be held 60-90 days after vacancy occurs. If the vacancy occurs 60-90 days before the primary election, the special election shall be held on the date of the primary election.
Connecticut C.G.S.A. 9-211	Yes	160 th day after vacancy occurs (excluding weekends), unless vacancy occurs between the 125 th and 63 rd days preceding a regularly-scheduled November general election, in which case vacancy is filled at that election. Governor may make a temporary appointment only in cases where a vacancy occurs after the municipal election in the year preceding the last year of the term or in the last year of the term of a senator. Approval of such nomination requires an affirmative vote of two-thirds of the membership of each chamber of the General Assembly.
Louisiana LSA-R.S. 18:402, 18:1278	Yes	On specific dates provided by law. If the unexpired term is more than one year, an appointment to fill the vacancy shall be temporary. Any senator so appointed shall serve until his successor is elected at a special election and takes office. If the unexpired term is one year or less, no special election is called but the successor is chosen at the next regular election.
Massachusetts M.G.L.A. 54 §140	Yes	145-160 days after vacancy occurs. If a vacancy occurs after April 10 but on or before the 70th day before the regular state primary, the office shall appear on the regular state primary ballot. If a vacancy occurs after that time, the office shall appear on the state election ballot that November.
Mississippi Miss. Code Ann. 23-15-855	Yes	Within 100 days of when governor receives official notice of vacancy, unless vacancy occurs in the year of a general state or congressional election, in which case the vacancy is filled in that election
North Dakota NDCC 16.1-13-08	No	When a vacancy occurs in the office of United States senator from this state, the governor shall call a special election to be held within ninety-five days to fill the vacancy. If the vacancy occurs within ninety-five days of the expiration of the term of office for that office, no election may be held to fill the vacancy.
Oklahoma	No	Within 30 days after the vacancy occurs. No special election is held if the vacancy occurs in an even-numbered year and the

Last Updated December 2017

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303-364-7700

26 Okl. Stat. Ann. 12-101		term expires the following year. In that case, the candidate is elected in the regular general election.
Oregon O.R.S. 188.120	No	A special election is called by the governor if the vacancy occurs before the 61st day before a general election.
Rhode Island Gen. Laws 17-4-9	No	At as early a date as is in compliance with the provisions of law. If vacancy occurs between July 1 and October 1 in an even-numbered year, the special election to fill the vacancy is held concurrently with the regularly-scheduled general election.
Texas V.T.C.A. Election Code 204.002, 204.005	Yes	If vacancy occurs in an even year on or before the 62 nd day before the primary, remainder of term is filled at next regular general election. If vacancy occurs after 62 nd day before the primary in an even year, or in an odd year, special election is held on the first uniform election date occurring on or after the 36 th day the election is ordered
Vermont 17 V.S.A. 2621	Yes	A date is set by the governor within 3 months following vacancy, unless vacancy occurs within 6 months of the general election, in which case the vacancy is filled at the general election
Washington RCWA 29A.28.030, 29A.28.041	Yes	Not less than 80 days following vacancy, unless vacancy occurs within 8 months of the general election, in which case the vacancy is filled at the general election
Wisconsin W.S.A. 17.18, 8.50	No	Between 62 and 77 days after date of order of special election, unless vacancy occurs between the 2nd Tuesday in May and the 2 nd Tuesday in July in an even year, in which case the vacancy is filled at the regular primary and general elections

Recent Legislative Action

- In 2017, Arkansas enacted HB 1279 which gives the governor the responsibility to appoint the replacement.
- In 2016, Maryland enacted HB 260, which requires the individual appointed by the governor to fill the vacancy to be of the same political party of the vacating senator.
- In 2015, North Dakota enacted HB 1181 which requires a special election and removes the power of the governor to appoint a replacement. Hawaii enacted SB 440 which made changes to the timeline of when an election to fill a vacancy is held. If a vacancy occurs not later than the 21st day, rather than the 60th day, before the close of filing nomination papers for regularly scheduled elections, the vacancy is filled at the following state general election.
- In 2012, five states considered but did not pass legislation dealing with U.S. Senate vacancies.
- In 2011, three states considered but did not pass legislation dealing with U.S. Senate vacancies.
- In 2010, seven states considered legislation to change the way vacancies in the U.S. Senate are filled; none of that legislation passed.



- In 2009, 12 of the states that currently permit the governor to fill U.S. Senate vacancies by appointment considered legislation to take away that authority and require a special election instead. **Connecticut** and **Rhode Island** passed legislation along these lines; in **Colorado, Maryland, Missouri**, and **North Carolina**, the bills failed to pass. In **Illinois, Iowa, Minnesota, New York, Ohio** and **Pennsylvania**, the bills carried over to the 2010 legislative sessions. In **Massachusetts** a bill was passed in response to the death of Senator Edward Kennedy and his request that the current law be changed. Previous law in Massachusetts called for a special election to be held, but not until five months after the vacancy occurs. The new law retains the special election but permits the governor to appoint a temporary successor in the interim.
- In 2008, bills addressing U.S. Senate vacancies were introduced but failed to pass in **Massachusetts, Minnesota** and **Rhode Island**. In **Kansas**, the legislature passed a bill removing the governor's authority to make an appointment to fill a vacancy in the office of U.S. Senator, but it was vetoed by the governor.

Federal Laws

Article I of the U.S. Constitution, amended by the 17th Amendment, and one section of the U.S. Code relate directly to how states may fill vacancies in the U.S. Senate.

[U.S. Constitution, Article I, Section 3](#)

...if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

[U.S. Constitution, 17th Amendment](#)

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

[2 U.S.C. Section 8. Vacancies](#)

The time for holding elections in any State, district, or territory for a Representative or Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and territories respectively.